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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 CHARLES FRANK SPENCE,

12 Petitioner,

2:03-cv-1987-GEB-JFM-P

13 vs.

14 ALEXANDER HICKMAN, Warden,

15 Respondent.

ORDER

16 \_\_\_\_\_/  
17 Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of  
18 this court's July 6, 2009 denial of his application for a writ of habeas corpus. Before petitioner  
19 can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R.  
20 App. P. 22(b).

21 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the  
22 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.  
23 § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues  
24 satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

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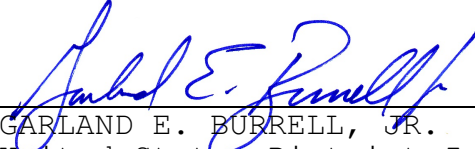
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1 A certificate of appealability should be granted for any issue that petitioner can  
2 demonstrate is “‘debatable among jurists of reason,’” could be resolved differently by a different  
3 court, or is “‘adequate to deserve encouragement to proceed further.’” Jennings v. Woodford,  
4 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).<sup>1</sup>

5 Petitioner has made a substantial showing of the denial of a constitutional right in  
6 the following issues presented in the instant petition: (1) denial of due process and the privilege  
7 against self-incrimination by errors in adjudicating petitioner’s motion to exclude his custodial  
8 statement as a violation of his Miranda<sup>2</sup> rights; (2) insufficient evidence of first degree murder;  
9 (3) insufficient evidence of special circumstances; and (4) ineffective assistance of counsel in  
10 failing to investigate and present evidence of petitioner’s strongest defense, i.e. that his  
11 discussions with Smithson amounted only to mere preparation not amounting to aiding and  
12 abetting.

13 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is  
14 issued in the present action.

15 Dated: August 13, 2009

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18 GARLAND E. BURRELL, JR.  
United States District Judge

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23 <sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard  
24 for issuance of a certificate of appealability is the same as the standard that applied to issuance of  
a certificate of probable cause. Jennings, at 1010.

25 <sup>2</sup> In Miranda v. Arizona, the United States Supreme Court held that custodial  
26 interrogation must be preceded by advice to the potential defendant that he has the right to  
consult with a lawyer, the right to remain silent and that anything he says can be used in evidence  
against him. 384 U.S. 436, 469-73 (1966).